Following the above case I am of the opinion that the defect in the present case cannot be cured by invoking the provisions of section 131 of the Bankruptcy Ordinance which is in *pari materia* with section 143 sub-section (1) of the Bankruptcy Act 1883.

That being so, I uphold the objection taken by the debtor and dismiss this petition with costs.

Petition dismissed.

Solicitors: *C. J. Koh & Co.; Donaldson & Burkinshaw.*

REMBHA BAI & ANOR. v. JASANI

[C. A. (Thomson C.J., Rigby and Ong JJ.) December 13, 1960]

[K. L. — F.M. Civil Application No. 2 of 1960]

Practice and Procedure — Court of Appeal — Extension of time — Appeal in forma pauperis — Notice of Appeal should be given without waiting for result of application to proceed as a poor person.

Where a party desires to appeal against a judgment of the High Court and also wishes to secure leave to appeal *in forma pauperis* the proper course is to give Notice of Appeal within the prescribed period without waiting for the event of his application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium.*

Case referred to:—

(1) *Addison* v. *Addison & Holden* [1960] 1 W.L.R. 1088; [1960] 3 All E.R. 187.

COURT OF APPEAL.

H. B. Ball for the applicant.

Respondent absent.

Thomson C.J. delivering oral judgment: This is an application for extension of time within which to file Notice of Appeal against a judgment of the High Court. The ground on which extension is asked for is that the applicant is said to be a poor person and has been engaged in securing leave to appeal *in forma pauperis.*

We are going to grant the application, which is not opposed, by giving her time till 31st December but we wish to express the view, following what was said by the Court of Appeal in England in the case of *Addison* v. *Addison & Holden*[1], that in such a case the proper course is to give Notice of Appeal within the prescribed period and not await the event of any application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium.* The actual expense of giving Notice of Appeal is trivial and public policy demands that a successful litigant should have notice within the time prescribed by law that his position may be challenged.

Application allowed.

Solicitors: *Allen & Gledhill.*

LIEW KALING & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Hill J.A. and Hepworth J.) December 14, 1960]

[Penang — F.M. Criminal Appeal No. 20 of 1960]

Criminal Law and Procedure — Murder trial — Joinder of several capital charges — Undesirable.

Evidence — Conspiracy to commit murder — Evidence Ordinance, 1950, s.10 — Inference — Two conditions must be complied.

Quantum of proof — "Beyond reasonable doubt" — Test of "proved" under s.3 of the Evidence Ordinance — Direction to jury — Use of analogies.

The trial together of more than one charge of murder is undesirable.

The words of section 10 of the Evidence Ordinance are not capable of being widely construed so as to include a statement made by one conspirator, in the absence of the other, with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. *Mirza Akbar* v. *King Emperor* (3) applied.

It is open to the jury to draw inferences from particular pieces of evidence, but it must be explained to them that before an inference can be regarded as a valid one it must comply with two conditions:

(i) it must account for all the known facts; and

(ii) it must be the only reasonable inference which will account for all these facts.

In many cases it is not necessary to give such a caution to the jury but in a case where the prosecution evidence consisted of a somewhat meagre body of primary facts from which the jury were asked by the prosecution to draw a number of inferences of the utmost gravity it would have been safer to give some guidance as to the principles of ratiocination which were applicable.

In any criminal case the onus lies upon the prosecution to prove that the accused person is guilty of the offence charged against him or of some other charge for which he can be lawfully convicted on the charge against him. The test of "proved" is the test of the prudent man according to "the circumstances of the particular case". It is undesirable to read section 3 of the Evidence Ordinance to the jury. The jury must be satisfied "beyond reasonable doubt". There is no set formula required. The degree of proof "need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt . . . If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice." *Miller* v. *Minister of Pensions* (9) followed.

Cases referred to:—

(1) *Chew Ming* v. *Public Prosecutor* [1960] M.L.J. 11.

(2) *Rex* v. *Davis* 26 Cr. App. R. 95; [1937] 3 All E.R. 537.

(3) *Mirza Akbar* v. *King-Emperor* 67 I.A. 336, 348; 190 I.C. 233; I.L.R. 1940 Kar. 302; 43 Bom. L.R. 20; 73 Cr. L.J. 252; 45 C.W.N. 269; I.L.R. 1940 Lah. 612; [1940] 2 Mad. L.J. 811; A.I.R. 1940 P.C. 176.

(4) *Rex* v. *Grondkowski* [1946] 1 K.B. 369, 372.

(5) *Lawrence* v. *The King* [1933] A.C. 699, 707.

(6) *Rex* v. *Horry* [1952] N.Z.L.R. 111.

(7) *Kritz* 33 Cr. App. R. 169, 177.

(8) *Ismail bin Abdullah* v. *Public Prosecutor* [1959] M.L.J. 269, 270.

(9) *Miller* v. *Minister of Pensions* [1947] 2 All E.R. 372, 373.

(10) *Podmore's case* 22 Cr. App. R. 36.

COURT OF APPEAL.

Lim Ewe Hock for the 1st appellant.

David Marshall (*A. S. Yeo* with him) for the 2nd appellant.

S. Thillaimuthu for the 3rd appellant.

Abdul Hamid bin Omar (D.P.P.) for the respondent.

Thomson C.J.: Each of these three appellants was convicted at the Ipoh Assizes on each of three charges of murder in contravention of section 302 of the Penal Code. Each of them was sentenced to death and each of them appealed against each of his convictions.

We allowed all these appeals on 23rd November last and intimated we would give our reasons for doing so at a later stage. We now proceed to do so.

Before going further, however, we would repeat what we said in the case of *Chew Ming* v. *Public Prosecutor*[1] where we reiterated the view of Lord Hewart L.C.J. expressed in the case of *Rex* v. *Davis*[2] that the trial together of more than one charge of murder is undesirable. In the present case the course was taken of trying all three charges against all three appellants together. This was not relied upon by any of the appellants as a ground of appeal and perhaps in the circumstances of the case such a course was unavoidable. Nevertheless we do not wish to remain silent on the point lest we afford ground for any suggestion that we have departed in any way from what we have said previously on the point. Indeed had the evidence in the present case been different from and rather more plentiful than it was the trial Judge might well have been faced with an almost insuperable task in directing the jury. He would have had to analyse the evidence in such a way that the jury applied it correctly to the nine questions involved, that is to say, the questions of whether each of three accused persons was so concerned in the killing of each of three deceased persons as to make him criminally responsible to the extent of being guilty of murder in each case.

The facts of the present case can be briefly summarised.

The three women mentioned in the charges were stabbed to death and their bodies were found covered with rubbish at the bottom of a well. They were able-bodied women of the labouring class and it was reasonable to suppose that the killing had been done at the same place and at the same time but would have required more than one killer. There was, too, evidence which made it appear reasonably probable that one of them had immediately prior to her death been in possession of a substantial sum of money and that all three had gone to the place near which their dead bodies were found for the purpose of purchasing stolen tin ore which they hoped to sell later on the strength of what are popularly known as "dulang washers' passes". This was strongly contested by the defence. It is, however, tolerably certain that it was made out by the evidence and in view of the conclusions at which we have arrived we do not propose to discuss that evidence in detail.

The result was that what the Court was concerned with was three very shocking murders committed with the object of pecuniary gain. As to that there was little room for doubt. The question of difficulty, however, that had to be decided at the trial was whether on the evidence implicating each of the accused any of them was guilty of any of the three murders.

On these questions the evidence, which was purely circumstantial, could not be described as overwhelming.

The evidence against the first accused, Liew, consisted in the first place of that of two school-boys, aged 13 and 16 respectively, the children of one of the dead women. They said that the night before the women were killed Liew and the second accused, Boo, came to their house and Boo had some conversation with their mother. The younger boy gave no account of this conversation but the older one said he heard Boo tell his mother that at Kampong Peng Soon (which is near where the bodies were ultimately found) there was about 800 pounds of tin ore and he asked her to bring some money there, presumably to purchase it. Then a Mrs. Lee, the married daughter of another of the murdered women, said that in the late afternoon of the day on which the killing took place Liew and the third accused Foo came to her house to see her husband. Foo had a bath and washed some clothes and then on the invitation of her husband they both had food. This witness gave some further evidence which will be discussed later, but so far as Liew and Foo coming to her house on 9th May is concerned her evidence was corroborated by her husband. Three days later Liew was arrested and was found to be in possession of $22.10 in notes. These notes were stained and on laboratory examination the stains on two of them were found to be the stains of human blood. Shortly after his arrest he led some police officers to a spot about half a mile from the scene of the killing where in consequence of information supplied by him the police recovered from a pool of water a "parang". This weapon had stains on it which when examined were found to be consistent with but not conclusively of the presence of blood.

The evidence against the second accused, Boo, consisted of the evidence which has just been recounted of the two school-boys who had seen him together with Liew at the house of one of the dead women on the evening before the killing and of the evidence of the older of those two boys as to the conversation he had with the dead woman. Then, on the afternoon of the day of the killing another school-boy, aged 17, the son of another of the dead women, met him and another man whom he did not know near the scene of the killing. Boo was riding a bicycle and pushing another bicycle which the witness recognised as that of his mother. When questioned he

said he had picked the bicycle up and was taking it to the Police Station and the boy then took possession of it. He was arrested some time later and then led the police to a place about half a mile from the scene of the killing where after some search they found the single blade of a pair of scissors. This blade bore no stains of any sort.

Finally, the evidence against the third accused, Foo, consisted of two items. First, there was the evidence that has already been mentioned in connection with the case against Liew that on the evening of the day of the killing Liew and Foo came to the house of Mrs. Lee, the married daughter of one of the dead women, where Foo had a bath and washed some clothes and where both of them had their meal. Then Mrs. Lee said that some days later (it was probably 14th May) Foo came to her house again. They had some conversation and Mrs. Lee said she was worried about her mother's death. Then Foo asked her if anybody had been arrested and she told him that a man whom she did not know but who had been found pushing a bicycle had been arrested. He then said that Boo whom he knew and another man Soh Chee had had a "share" (presumably in the killing) and he said that these two people had invited him to join them. She proceeded to scold him and then her husband came in. Shortly afterwards the police arrived and arrested him. Mrs. Lee's husband gave evidence and corroborated her story of the joint visit of Liew and Foo on the evening of the killing. This witness obviously entertained suspicions about Foo which he communicated to the police. A few days later he returned to his house and found Foo in conversation with his wife. He asked him about the murder. Foo said he had had no share in the murder but after some thought he said that three people whom he named were concerned in it. These three people were Liew, Boo and the man Soh Chee. Shortly afterwards the police came to the house and arrested Foo.

The defences of the three accused call for only cursory consideration.

Liew made a statement from the dock in which he said that he was passing by the scene of the crime when he met a man Soh Chee who was covered with blood and who threatened him with a "parang". He offered him $25 in notes presumably to take away the "parang". He took both the "parang" and the notes. He threw the "parang" into a pool and he kept the notes, most of which were found in his possession when he was arrested.

Boo gave evidence and this was to the effect that he had been passing along a path near the scene of the murder when he found an abandoned bicycle. He picked this up with a view to taking it to the Police Station. He dropped it when he was stopped by the school-boy and when he did so one blade of a pair of scissors fell from it. This was useless, so he threw it away.

Foo, if the record is correct, gave evidence on affirmation which consisted of fifteen words "Heaven knows I did not commit the murder. That is all I wish to say." His counsel apparently did not wish to take this any further and, more strangely still, he was not cross-examined.

The case was summed up to the jury at very great length in a summing-up, portions of which will have to be discussed shortly.

At the close of the case for the prosecution, however, a submission was made on behalf of Foo that on the prosecution evidence there was no case for him to answer, that in the words of section 214 of the Criminal Procedure Code there was no evidence that he committed the offence charged against him. On that the trial Judge ruled as follows:—

> "It is for the jury to decide if there is evidence from which inferences of guilt can be inferred to decide whether they in accordance with law are compelled to draw that inference. In this case the evidence against Accused 3 consists of his statement that he knew who had committed the murders, that he had taken no share plus his interest in the arrest or non-arrest and that is capable of the inference he had taken part in offence — although it is not the only possible inference."

Whether or not there was evidence fit to be left to the jury was a matter for the trial Judge and in our view in the present case it was wrong to say that there was such evidence. All that the evidence amounted to was that after the murders Foo had been in the company of Liew, that he had shown some interest in the murders and that after the arrest of the other two accused he had claimed to have knowledge that they and a third man were responsible. There was never, however, any sort of admission by him that he himself had any part in it. Considering that he and all the other witnesses lived in the same small community as the dead women it is not altogether surprising that he either had or purported to have some knowledge as to what had happened. In our view no jury properly directed could possibly have concluded that there was anything against him except a bare suspicion for which there was little if any foundation and in our view he should not have been put on his defence. On that ground we allowed his appeal and set his conviction aside.

As regards the other two accused the trial Judge's summing-up was criticised on a number of grounds with only some of which do we consider it necessary to deal here.

The most important of these, in our view, was the way in which he dealt with the evidence of Mrs. Lee's husband to the effect that some days after the killing Foo said to him: "probably Soh Chee, Soh Koy (i.e. the accused Boo) and Kaling Chai (i.e. the accused Liew) were concerned in this murder."

In this connection the jury were told that if they thought that on the evidence as a whole there was a conspiracy among all three accused, presumably though this was not said, to commit one or more of the murders, then by reason of section 10 of the Evidence Ordinance that evidence was admissible against Liew and against Boo and was something the jury might consider

in making up their minds as to their verdicts regarding those two accused.

In our view this was wrong.

There was no evidence on which it could be said there was any conspiracy of any sort among the three accused. It was said that because after the killing Liew and Foo had come together to Mrs. Lee's house, that was evidence on which it could be said there was a conspiracy between them, although it takes us no distance at all even to be able to speculate as to what the object of such a conspiracy might have been. Then it was said that the day before the killing Liew and Boo had been in company at the house of one of the dead women, and, if the evidence was believed, that visit could well have had something to do with the commission of the murders. But it is quite impossible to say that even if there was a conspiracy between Liew and Boo with regard to the murder Foo was a party to that conspiracy so as on any interpretation of section 10 to make his statements to a third party admissible against both Liew and Boo simply because after the murder he was found in the company of Boo. In any event there was no charge of conspiracy or abetment against any of the accused. Never from the beginning of the trial until the Judge spoke of it in the course of his summing-up was the word "conspiracy" even mentioned.

Again, even if there had been evidence to support a conspiracy, even had a conspiracy or some sort of abetment been alleged either in the charge or in the course of argument, the statement made by Foo was made some days after the purpose of any such conspiracy had been consummated and was thus inadmissible by reason of the judgment of the Privy Council in the case of *Mirza Akbar* v. *King Emperor*[3] where it was said (*per* Lord Wright):—

"Their Lordships think the words of section 10 must be construed in accordance with it, and are not capable of being widely construed so as to include a statement made by one conspirator, in the absence of the other, with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed."

The admissible evidence against Liew and Boo was not very strong and in the circumstances it is quite impossible to say that the jury would have reached the conclusion that both of them were guilty of all three charges if they had not been wrongly told they could consider this particular piece of evidence against them. In our opinion this was sufficient to compel us to quash their convictions.

That concludes the matter, but in deference to the very able argument that has been addressed to us by Mr. Marshall we feel we should add some words on one or two other points on which the summing-up was attacked.

In the first place the jury were told a great deal about drawing inferences. They were told it was open to them to draw inferences as to this and that from particular pieces of evidence. It was nowhere, however, explained to them that before an inference can be regarded as a valid one it must comply with two conditions. One of these is that it must account for all the known facts and the other is that it must be the only reasonable inference which will account for all these facts. In many cases, of course, it is not necessary to give such a caution to a jury but in a case like this where the prosecution evidence consisted of a somewhat meagre body of primary facts from which the jury were asked by the prosecution to draw a number of inferences of the utmost gravity we are of the opinion that it would have been safer to give some guidance as to the principles of ratiocination which were applicable.

In the second place it was said that the learned Judge was wrong in using the following words which he attributed to a former Chief Justice of England:—

"It is just as much an injustice to allow a man you believe to be guilty to escape as it is to convict an innocent man."

He was also criticised for making use of the following words on the same ground that they were unduly unfavourable to the appellants:—

" Unless, Gentlemen, these Courts of justice seek true verdicts then the country as a whole suffers. There is no longer any faith in the administration of justice and when the population ceases to have any faith in the administration of justice then internal discord naturally follows."

For ourselves we can see here no ground for criticism. It is surely beyond argument that juries must do their duty and that if a jury is convinced of the guilt of an accused person it is their duty to their country to say he is guilty. That is demanded alike by the interests of justice and by public policy. As was said by Lord Goddard C.J., in the case of *Rex* v. *Grondkowski*[4]:—

"The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners."

As the old maxim has it: *Minatur innocentes, qui parcit nocentibus.*

The remaining question on which we think we should make certain observations is the way in which the trial Judge dealt with the question of the quantum of proof in his charge to the jury.

It is, of course, axiomatic that in any criminal case the onus lies upon the prosecution to prove that the accused person is guilty of the offence charged against him or of some other charge for which he can be lawfully convicted on the charge against him. Until fairly recently it was generally held that the weight of the burden which thus lies upon the prosecution could best be described to juries by telling them that it was for the prosecution to prove every ingredient of their case and to prove it beyond reasonable doubt. As was said by Lord Atkin in the case of *Lawrence* v. *The King*[5]:—

"Speaking generally, it has to be remembered that it is an essential principle of our criminal law that a criminal charge has to be established by the prosecution beyond reasonable doubt: and it is essential that the tribunal of fact should understand this."

Or, as it was put in regard to one ingredient by the New Zealand Court of Appeal in the case of *Rex* v. *Horry*[6]:—

"The fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt:"

We are not concerned here with recent discussions in the English Courts as to the way in which the point can best be put to the jury. What we are concerned with is the way in which it was put to the jury in this particular case. As was said by Lord Goddard C.J. in the case of *Kritz*[7]:—

"It would be a great misfortune, in criminal cases especially, if the accuracy of a summing-up were to depend upon whether or not the Judge or the Chairman had used a particular formula of words. It is not the particular formula of words that matters; it is the effect of the summing-up. If the jury are charged whether in one set of words or in another and are made to understand that they have to be satisfied and must not return a verdict against a defendant unless they feel sure, and that the onus is all the time on the prosecution and not on the defence, then whether the learned Judge uses one form of language or whether he uses another is neither here nor there."

The philosophical background of what is there said can perhaps best be appreciated in the light of the following passage from *Wigmore's "Evidence"* (3rd ed., sec. 2497 at p. 325):—

"The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence there can be no successful method of communicating intelligibly to a jury a sound method of self-analysis for one's belief. If this truth be appreciated, Courts will cease to treat any particular form of words as necessary or decisive in law for that purpose; for the Law cannot expect to do what Logic and Psychology have not yet done."

In the present case the learned trial Judge made several references to the subject. At the very end of his address he said this:—

"I do not think, Gentlemen, there is anything I can say that will further assist you. I can only repeat to you: approach your problem as you would a difficult problem in your everyday life. Adopt the attitude of a prudent man, i.e., an ordinary careful man. Examine the prosecution case. See if it satisfies you. If it does not satisfy you then you need not go any further because the prosecution have not satisfied you of their guilt. If the prosecution evidence standing alone satisfies you, then you consider how much of the evidence of the accused might reasonably be true having regard not only to the inherent probabilities but also to the evidence of the prosecution. If you feel not satisfied then it is an acquittal. On the other hand, on consideration of everything you are still satisfied of the guilt of any of these accused, then it is your clear duty to say so."

That passage by itself is perhaps not altogether adequate but at the lowest and had there been nothing more it could be said that it was not likely to mislead the jury.

There was, however, an earlier passage which in our opinion cannot altogether escape criticism. In that passage after stating that the prosecution must prove the guilt of each of the accused beyond reasonable doubt, but not beyond any doubt, His Lordship said:—

"For myself, I find it far easier to understand and explain the position in this manner. It is for the prosecution to satisfy you of the guilt of the accused. The extent to which they have to satisfy you is contained in section 3 of our Evidence Ordinance. Let me read it to you. 'A fact is said to be 'proved' when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.' I do not think that requires any great explanation by me or any lengthy explanation by me. It merely amounts to this: that the test is the test of an ordinary man in his ordinary everyday life. The test does not vary according to the nature of the case .....

I wish to talk to you about the test as it is enunciated in section 3 of our Evidence Ordinance and, as I said, it is a test of an ordinary man carrying out his ordinary duties. Let us use that as an illustration of what I mean. No doubt, in your ordinary everyday work each of you has to make a decision. It might be that you have to decide whether you are going to give Mr. 'X'* a licence to do something. Well, he makes his application and he tells you his reason for wanting that licence and at the end of it you say, 'That satisfies me', and you give him his licence."

Here we would begin by quoting our own words in the case of *Ismail bin Abdullah* v. *Public Prosecutor*[8]:—

"We very much doubt the wisdom of the practice which seems to be on the increase nowadays of quoting the actual words of the Evidence Ordinance to juries. It has been said both in India and here that it is very much to be doubted whether quoting the actual words of the Evidence Ordinance as they stand can be of any great assistance to a jury."

The reason for our saying that was, of course, that the statement in section 3 of the Evidence Ordinance as to when a fact is to be said to be "proved" is like so much of the work of the late Sir James Stephen, apparently simple but in fact very rich in content and not very easy to understand. It is a matter of historical knowledge that the Indian Evidence Act was primarily drafted to be read by persons of a very high standard of education who were not necessarily professional lawyers and it is no reflection upon those who serve on juries here (or indeed in England) to say that for most of them it must be a matter of almost insuperable difficulty to appreciate such a philosophical distinction as that between believing a fact to exist and considering its existence so probable that a hypothetically prudent man ought to act upon the supposition that it does exist. In our view the section can only safely be read to juries if it is followed by the most careful and accurate exegesis but in the present case the exegesis with which the jury were in fact provided was not quite adequate.

It may be true but it is certainly not enough to say that "the test does not vary according to the nature of the case". That is true in the sense that the test is always that of the prudent man applying his mind to the ordinary affairs of life and not that on the one hand of the scientist seeking to establish absolute truth or on the other hand the religious teacher seeking to establish emotional truth. It is, however, only helpful to say that the only standard is that of the prudent man if we go on to say that the prudent man himself applies a variety of

* His Lordship actually used the name of one of the counsel engaged in the case who, however, it is thought would prefer that his name be not preserved here as in forensic amber.

standards, a variety of standards that can be almost infinite, to the problems of ordinary life. As is said in the passage which has been quoted from *Wigmore* the matter is perhaps not capable of being expressed in words but clearly the standard which a prudent man will apply to the question of whether he should take a box of chocolates home to his wife is something different from the standard he will apply to the question of whether he should take the good lady a valuable diamond ring. He will apply a different standard to the question of whether his butler has helped himself to a little of his whisky than he will to the question of whether his wife has been seduced by his gamekeeper. In other words the standard which the prudent man will apply to any question which confronts him will vary according to the importance of the question itself. It will vary in the words of the Ordinance according to "the circumstances of the particular case" and so in our view it was definitely misleading in the present case to say that the question of convicting three men of a serious crime should be judged by the same standards as would be applied to the question of issuing or refusing a licence of some sort. Analogies speak more vividly than do words and for that very reason the utmost care must be observed in their use.

It is not necessary for us to take the matter further here or to discuss at length the numerous cases to which we were referred. It is probably true to say that nowadays, whatever may have been the case a few years ago, there is clearly a preponderance of judicial opinion in favour of directing a jury in the traditional way that they must be satisfied beyond reasonable doubt. It may be that "reasonable doubt" is a little difficult to define. It may be that as is said in an American work cited in *Wigmore* (sec. 2497 at p. 323) :—

> "All the definitions are little more than metaphysical paraphrases of an expression invented by the common law judges for the very reason that it was capable of being understood and applied by men in the jury box."

And, of course, as was pointed out in *Kritz's* case it is not the formula that matters. What matters is the effect it produces on the minds of the jury. No doubt in this country where the historical background is very different from that in England if the expression "reasonable doubt" is used then some effort must be made to explain it. We are not, however, unduly impressed with the difficulty of doing so.

We are not laying down or commending any formula. There are, however, in existence two examples of how the point can be expounded, a consideration of which convinces us that there is no real difficulty.

The first of these passages is from the judgment of Denning J. (as he then was) in the case of *Miller* v. *Minister of Pensions*[9] where His Lordship thus described the degree of proof required in criminal cases:—

> "That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

The second passage is from the summing-up of Lord Hewart C.J. in *Podmore's* case[10] where His Lordship used the phrase "beyond reasonable doubt" and then went on to say (the passage is from the transcript) :—

> "You will not, I am sure, allow yourselves to be bewildered or troubled by such a phrase. What it means is not some whimsical or fanciful doubt, which a person might conjure up for the purpose of creating a difficulty, but such a doubt as would govern a man's course of action in some private affair of moment of his own."

Appeals allowed.

Solicitors: *Lim, Lim & Oon; A. S. Yeo; S. Thillaimuthu.*